IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2657 OF 2007

Smt. Rashmi Jitendrasingh Hajare,
Age 30 years, Occ: Social service,
Residing at: Ward No.3, House No.562,
C/o. Singh Photo Studio, Ichalkaranji,
District : Kolhapur. .. Petitioner

v/s.

1. State of Maharashtra
(Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under order XXVII, Rule 4 of the Code of Civil Procedure, 1908.)

2. The Regional Caste Verification Committee,
Pune Division, Pune.
(Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under order XXVII, Rule 4 of the Code of Civil Procedure, 1908.)

3. Mrs. Sunita Suhas Latane
Adult, Occ: Service,
Residing at : : 9/71/1/1,
Ambrali Road, Gonkarmala,
Ichalkaranji, District : Kolhapur.

4. Ichalkaranji Municipal Council
Tal: Hathkalangli,

District: Kolhapur .. Respondents

Mr. A.V. Anturkar with Mr. Sugandh Deshmukh for the petitioner.
Mr. V.A. Gangal, Spl. Counsel with Mr. V.P. Malwankar, Assistant Government Pleader for the respondent Nos.1 and 2.
Mr. T.S. Ingale for the Respondent No.4.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.
DATED : 19TH APRIL, 2007

ORAL JUDGMENT (Per F.I. Rebello, J.)

Rule. Heard forthwith.

2. The petitioner by the present petition has sought a declaration that the provisions of Section 10 the `Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, which hereinafter shall be referred to as Caste Verification Act, is ultravires Article 243-ZG (b) of the Constitution of India and consequently the relief sought is that the petitioner's election as a Councillor should not be deemed to have come to an end. Prayer clause is also sought to verify the caste certificate of the petitioner as belonging to Pardeshi community.

3. The petitioner had earlier filed writ petition No.1526 of 2007, wherein one of the reliefs prayed for was to set aside the judgment and order passed by the Regional Caste Verification Committee, Pune Division, Pune in Caste No.2/115/2006 dated 17th February, 2007. That petition came to be withdrawn with liberty to file fresh

petition to challenge the provisions of the Caste Verification Act. The said petition was accordingly, dismissed with liberty as prayed for by our order dated 16th March, 2007.

4. The petitioner in support of his submissions has firstly relied on the provisions of section 10(4) of the Caste Verification Act which reads as under:-

> "(4) Notwithstanding anything contained in any law for the time being in ;force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, Co-operative Society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively."

It is firstly submitted that merely because the Committee has not granted validity to the caste claim of the petitioner would not make the claim false. What section 10(4) holds is a false caste certificate. It is, therefore, submitted that the only candidate who obtains the false certificate fraudulently, stands disqualified. In that context, the expression "false" has to be read as fraudulent.

The Act itself uses different terminologies. Section 10(4) uses the expression "false" whereas section 11 which is a provision

pertaining to offences and penalties, uses the expressions “obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means.” Section 13 makes the act of the person or authority who intentionally issues a false Caste Certificate, punishable under the Act. The Act, therefore, has recognised the expression “false” as also “fraudulent”. We may make gainful reference to the dictionary meaning of the words “false” and “fraudulent” as if two expressions have not been defined under the Caste Verification Act. In Black's Law Dictionary, 6th Edition, it is set out as under:

> “The word “false” has two distinct and well recognized meanings: (1) intentionally or knowingly or negligently untrue; (2) untrue by mistake or accident, or honestly after the exercise of reasonable care.

In P. Ramanatha Aiyar's, The Law Lexicon, the word “false” has been defined “Erroneous, untrue, the opposite of correct, or true” also means, “but the word is also sometimes used in the sense of mistakenly or erroneously.”

The Law Lexicon, on the other hand defines “fraudulent” to mean “conduct means dishonest conduct deliberately intended to evade the prohibition or restriction with respect to, or the duty chargeable on, goods as the case may be.

The expressions, therefore, are used in different context. Whereas under section 10(4), the moment the relevant community declares the caste certificate as invalid, the election of the Councillor is deemed to have been terminated retrospectively, in so far as

offences are concerned, only those persons can be punished who obtains the false caste certificate by furnishing false information or filing false statement or documents by any other fraudulent means. This also would indicate that the two expressions are used distinctly under the Act. For the disqualification of a person, the Caste Committee has to arrive at a conclusion that the certificate obtained is not true which necessarily imports or implies that it is false.

In Lillykutty v. Scrutiny Committee, SC & ST and ors. (2005)8 SCC 283, the Hon'ble Supreme Court was considering the provisions of the local legislation in the State of Kerala. In its supplementary judgment, S.B. Sinha, J. quoted the various definitions of fraud and then went on to proceed to answer the same as under:

> "Any action by the authorities or by the people claiming a right/privilege under the Constitution which subverts the constitutional purpose must be treated as a fraud on the Constitution. The Constitution does not postulate conferment of any special benefit on those who do not belong to the category of people for whom the provision was made."

In our opinion, therefore, the first contention as urged on behalf of the petitioner has to be rejected.

5. The second contention which has been urged is that in the teeth of Article 243 ZG (b) read with sections 16 and 21 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, hereinafter referred to as MNC Act, there can be no action taken to disqualify an elected councillor save and except, by an election petition. To understand that contention, gainful reference

may be made to Article 243 ZG (b) which reads as under:

> "(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

It would thus be clear from a plain and literal reading of the said Article, that no election to any Municipality shall be called in question except by an election petition. Section 21 of the MNC Act sets out that no election or nomination of a Councillor may be called in question, except by a petition presented to the District Court, by a person set out therein, within 10 days from the date of publication of the names of the Councillors in the Official Gazette. This Article therefore, applies only to an election process which would commence with the filing of the nomination and ending with the declaration of the results. The disqualifications amongst others have to be from an act under section 16 or section 22 of the Act.

The question that we have been called upon to answer is, if a statute provides for removal of an elected Councillor after the declaration of the results on the ground available under the Municipal Councils Act or any other cognate legislation, in the instant case the Caste Verification Act prospectively or retrospectively, would such a provision in those Acts be ultravires Article 243 ZG (2)(b) of the Constitution of India.

6. In our opinion, the matter was directly in issue before the Full Bench of this court in ***Sujit Vasant Patil v. State of Maharashtra & ors., 2004(4) All MR 537*** wherein the similar challenge was made.

The issue has been answered in paras 12A, B and C of the judgment. The matter was again considered by another Full Bench of this court in ***Ramesh Suresh Kamble v. State of Maharashtra & ors., 2006(6) All MR 803***. The learned Full Bench also relied on the earlier Full Bench judgment and rejected the contention as to validity of the section in respect of which the declaration is sought.

7. In so far as prayer clause (c) is concerned, the Caste Scrutiny Committee verifies the caste certificate which is forwarded to it. There is no question therefore of the Caste Committee verifying a certificate that the petitioner belongs to the `Pardeshi Bhamta- a Vumukta Jati' to go into the issue whether the petitioner belongs to the `Pardeshi Community' or otherwise Backward Community. It is for the petitioner, if entitled to in law, to apply for the caste certificate before the Competent Authority, and if the certificate is issued, then to apply for its verification before the relevant Caste Committee. The relief as prayed for cannot therefore be granted.

8. We are, therefore, clearly of the opinion that both the challenges as raised are devoid of merit. Consequently, rule discharged. There shall be no order as to costs.

(F.I. REBELLO, J.)

(R.M. SAVANT, J.)